

REMARKS

I. Status of the Claims

With entry of the amendments herein, claims 13, 15-22, 37, 39-46, 49, 51 -55, 57, 58, 60, and 61 are pending in this application. Independent claims 13, 37, and 49 are amended herein to incorporate the phrase "wherein the concentration of EPA ranges from 10% to 20% and the concentration of DHA ranges from 20% to 50%." Dependent claims 57, 58, 60, and 61 are amended to reflect the amendment in the independent claims. Support for those amendments can be found throughout the specification and in now cancelled claims 56 and 59. Accordingly, no new matter is added by the amendments herein.

II. Rejection under 35 U.S.C. § 103

The Office maintains the rejection of claims 13, 15-22, 37, 39-46, 49, and 51-61 under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 5,502,077 to Breivik et al. ("Breivik") in view of U.S. Patent Application Publication No. 2005/0019372 to Corkey et al. ("Corkey"). Office Action at page 5. Applicants respectfully disagree; however, by this Amendment, Applicants amend independent claims 13, 37, and 49 to recite that the concentration of EPA ranges from 10% to 20% and the concentration of DHA ranges from 20% to 50%.

To the extent, however, that the Office may consider rejecting the claims based on Breivik in view of Corkey, Applicants respectfully submit that Breivik and Corkey fail to establish a *prima facie* case of obviousness. Applicants submit that Breivik and Corkey, alone or in combination, fail to teach or suggest each and every element of the

claimed invention. Also, Applicants submit that Breivik and Corkey, alone or in combination, would fail to motivate one skilled in the art to modify the composition to arrive at the presently pending claims.

As the Office stated in the Office Action, Breivik teaches that the composition comprises at least 80% omega-3 polyunsaturated fatty acids and least 75% of the total fatty acids comprise EPA and DHA. Office Action at 5. In contrast, the pending claims recite an upper limit of EPA and DHA of 70 %. Thus, the claimed range falls outside of the range disclosed in Breivik and it does not offer any suggestion or motivation regarding the claimed range.

Corkey does not cure the deficiency of Breivik since it does not teach or suggest the claimed concentrations of EPA and DHA or that the concentration of DHA is greater than the concentration of EPA. Instead, Corkey teaches "a small portion of EPA and DHA" as pointed out by the Office in the final Office Action on page 7.

Specifically, Corkey teaches that the 3-PUFAs (polyunsaturated fatty acids) in the composition range from 1-10% in total with the rest being medium chain fatty acids - MCFAs (70-80%) and long chain fatty acids-LCFAs (10-20%). Corkey at ¶¶ at [0029], [0124], and Table 6. In contrast, both the EPA and DHA in the claimed ranges are over 10% and together, the lower limit of EPA and DHA is 30%. Thus, at a minimum, Applicants composition contains three times as much total 3-PUFA as Corkey.

Further, Corkey would not suggest the claimed range to one skilled in the art or would motivate one skilled in the art to arrive at the claimed range. In fact, Corkey actually teaches away from a composition which comprises more than its recited maximum of 10% 3-PUFA. Corkey teaches in example 12 that the addition of only 5%

DHA to inhibit fatty acid synthesis. *Id.* at Example 12, ¶¶ [0121] and [0122]. Corkey states that “a small portion of EPA or DHA will *synergize* the positive effects of both types of fatty acids [MCFA and PUFA] in reducing fat storage in adipose tissue and fat production in the liver.” *Id.* at ¶ [0121]. One skilled in the art would recognize that Corkey would suggest or motivate one skilled in the art towards a small amount of 3-PUFA rather than the lower limit of 30%. As such, Corkey teaches away from the claimed range because it states that the small portion of the 3-PUFA is needed for the synergist effects of fat reduction. One skilled in the art would not have a reasonable expectation of success when increasing the amount of DHA and EPA by 3 times in view of the synergist effects in Corkey by using “a small amount.”

Also, Corkey does not disclose a ratio of DHA to EPA or even that the concentration of DHA is greater than the concentration of EPA. Instead, the only range that Corkey teaches is that “[t]he fat mixture can also preferably also contain adequate ratios of the long chain PUFAs of the ω -3 and ω -6 series, the ratio preferably being between 2:1 to 5:1 or 10:1.” *Id.* at ¶ [0029]. Since Corkey does not teach a ratio of DHA to EPA, Corkey cannot be relied upon “to show that in the embodiment where Breivik teach DHA at a high ratio as compared to EPA, the same desired effect is achieved as claimed in the alleged invention.” Advisory Action at 2.

Thus, Applicants submit that Breivik and Corkey, alone or in combination, fail to teach or suggest each and every element of the claimed invention. Also, Applicants submit that Breivik and Corkey, alone or in combination, would fail to motivate one skilled in the art to modify the composition to arrive at the claimed inventions. This

results in the lack of a *prima facie* case of obviousness. Applicants respectfully request the withdrawal of the rejection.

III. Conclusion

In view of the foregoing amendments and remarks, Applicants submit that this claimed invention, as amended, is not rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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